

Remarks/Arguments**A. Pending Claims**

Claims 1-107 and 283 are pending. Claims 1, 4, 8, 17, 18, 23, 30-32, 36, 41, 42, 44, 56, 59, 62, 63, 70, 71, 74, 81, 91, 102, and 105 have been amended. Claims 4, 8, 17, 18, 30-32, 36, 41, 44, 56, 59, 62, 63, 81, and 102 have been amended for clarification and/or correction of typographical errors.

B. Claim Objections

Claims 36 and 41 were objected to because of informalities. Claims 36 and 41 have been amended for clarification.

C. The Claims Are Definite Pursuant To 35 U.S.C. § 112, Second Paragraph

The Examiner rejected claims 23-41 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 23 has been amended for clarification. Applicant respectfully requests removal of the rejections of claims 23-41.

D. The Claims Are Not Anticipated By Montague Pursuant To 35 U.S.C. § 102(b)

The Examiner rejected claims 1, 2, 5, 20, 21, 23-25, 27, 37, 42, 43, 46, 48, 65, 66, 91-94, 96, 105, and 106 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,688,272 to Montague et al. (hereinafter "Montague"). Applicant respectfully disagrees with these rejections.

The standard for "anticipation" is one of fairly strict identity. To anticipate a claim of a patent, a single prior source must contain all the claimed essential elements. *Hybritech, Inc. v.*

Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986); *In re Donahue*, 766 F.2d 531, 226 U.S.P.Q. 619 (Fed. Cir. 1985).

The Examiner states: "Montague discloses, in figures 6 and 7, a connector (204) or transverse connector (of bone or the spine) for an elongated member (R) having a body (30), an opening (32) in the body configured to hold the elongate member, and engager (40) with a surface (47) of the cam system, and an engaging mechanism or a cam system (12) with a portion (40) angulated within the body substantially perpendicular to a longitudinal axis of the body, where removal of the cam system is inhibited by a nut (43) and the engagement portion (12), where a drive tool (e.g., an Allen head wrench—see col. 9, lines 5-10) is used to rotate the cam system (at the engager)."

Montague states: "To clamp transverse connector 10 to rod R, the engagement portion 12 of one end 13 of the transverse connector 10 is placed over the clamp assembly 30 so that the downward legs 14 straddle the clamp assembly 30 and the lower surfaces 16 engage rod R received in the passage 32." (Montague, col. 10, lines 24-28)

Amended claims 1 and 42 recite in part: "a cam system positioned in a cam system opening in the body". Figures 6 and 7 of Montague do not appear to teach or suggest a cam system positioned in a cam system opening in the body. The above-quoted feature of claims 1 and 42, in combination with the other features of the claims, does not appear to be taught or suggested by Montague. Applicant respectfully requests removal of the rejections of claims 1 and 42 and the claims dependent thereon.

Amended claim 23 recites in part: "a cam system positioned in a cam system opening in the connector, the cam system configured to extend an engager into an opening in the connector during use to couple the connector to the elongated member." Figures 6 and 7 of Montague do not appear to teach or suggest a cam system positioned in a cam system opening in the connector. The above-quoted features of claim 23, in combination with the other features of the claim, do

not appear to be taught or suggested by Montague. Therefore, Applicant respectfully requests removal of the rejections of claim 23 and the claims dependent thereon.

The Examiner states: "Montague et al. disclose, in figure 7, a bone stabilization system (10) and a method of attaching a transverse connector to an elongated member, where the system and method include first and second elongated members (R), first and second fixation elements (200), and a connector (11) of fixed length and having a cam system (12, 40, 43) coupling the connector to the elongated members."

Amended claim 91 recites in part: "a cam system positioned in a cam system opening in the connector." Figure 7 of Montague does not appear to teach or suggest a cam system positioned in a cam system opening in the connector. The above-quoted feature of claim 91, in combination with the other features of the claim, does not appear to be taught or suggested by Montague. Applicant respectfully requests removal of the rejections of claim 91 and the claims dependent thereon.

Amended claim 105 recites in part: "a cam system positioned in a cam system opening of the transverse connector". Figure 7 of Montague does not appear to teach or suggest a cam system positioned in a cam system opening of the transverse connector. The above-quoted feature of claim 105, in combination with the other features of the claim, does not appear to be taught or suggested by Montague. Applicant requests removal of the rejections of claims 105 and the claims dependent thereon.

E. The Claims Are Not Anticipated By Wagner Pursuant To 35 U.S.C. § 102(b)

The Examiner rejected claims 1, 15, 16, 22, 42, 60, 61, 64, 67, 70, 77, 88-90, and 102-104 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,304,179 to Wagner (hereinafter "Wagner"). Applicant respectfully disagrees with these rejections.

The Examiner states: "Wagner discloses...a cam system (54) in communication with the first opening ... to extend an engager (16) into the first opening...." Applicant respectfully disagrees with the Examiner's description.

Wagner states:

[C]am bushing handling tool 54 is used to rotate a particular cam bushing 16 while holding the associated pedicle screw 14 in place. Lock nut handling tool 56 is used to secure lock nuts 36 to each cam bushing 16 while holding pedicle screws 14 in place. The rotation of cam bushing 16 can be manipulated in the manner described above to adjust the angle of insertion of pedicle screw 14 into the patient's vertebrae.

(Wagner, col. 7, lines 8-16)

Amended claims 1, 42, and 70 recite in part: "a cam system positioned in a cam system opening in the body". Wagner does not appear to teach or suggest a cam system positioned in a cam system opening in the body, in combination with the other features of the claim. Therefore, Applicant respectfully requests allowance of claims 1, 42, and 70 and the claims dependent thereon.

Amended claim 102 recites in part: "placing a cam system in a cam system opening in a body of the connector". Wagner does not appear to teach or suggest placing a cam system in a cam system opening in a body of the connector, in combination with the other features of the claim. Applicant requests allowance of claim 102 and the claims dependent thereon.

F. The Claims Are Not Obvious Over Montague Pursuant To 35 U.S.C. § 103(a)

The Examiner rejected claims 4, 27, and 44 under U.S.C. 103(a) as being unpatentable over Montague in view of U.S. Patent No. 5,662,651 to Tornier et al. (hereinafter "Tornier"). The Examiner rejected claims 95 and 107 under 35 U.S.C. 103(a) as being unpatentable over Montague. Applicant respectfully disagrees with these rejections.

The Examiner states: "Montague et al. disclose the invention substantially as

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Amendment

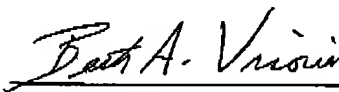
claimed...." Applicant submits that, for at least the reasons discussed in section D, Montague does not disclose the invention substantially as claimed. The cited art does not appear to teach or suggest all of the features of the rejected claims. Therefore, Applicant respectfully requests allowance of claims 4, 27, 44, 95, and 107.

G. Additional Remarks

Applicant respectfully submits that new claim 283 should be allowed because it includes the limitations previously recited in claim 42, which the examiner indicated was allowable if written in independent form. Applicant submits that all claims are in condition for allowance. Favorable reconsideration is respectfully requested.

Respectfully submitted,
McBride, et al.

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